THE NEED OF A SOCIOLOGICAL JURISPRUDENCE.

By Roscoe Pound.

If we may credit press reports, an eminent Canadian asserted recently in an address in London that "peace and order are more assured in Canada than in the United States."[1] I do not believe that this is so. But it is noteworthy that a conservative and experienced man of affairs should so believe, and that his statement made on an occasion of some importance should remain unchallenged. And it must be admitted that the law of the land has not the real hold upon the American people which law should have, and that there is a growing tendency to insist upon individual standards and to apply them in the teeth of the collective standard which is or ought to be expressed in the law. Illustrations of this tendency are abundant. From examination of the volumes in the National Reporter System, it appears that in 1906 over ninety new trials were directed by our highest courts of review in actions against employers for personal injuries because the verdicts were not sustained by evidence warranting a recovery. During the same year, over forty new trials were granted by these courts for the same reason in actions against railroad companies for personal injuries. How many verdicts were set aside by trial courts in such cases for the same reason, we do not know. Nor is there means of knowing in how many more such cases the verdicts returned would not have been rendered if the law had been zealously applied and enforced. But it is notorious that a crude and ill-defined sentiment that employers and great industrial enterprises should bear the cost of the human wear and tear incident to their operations, dictates more verdicts than the rules of law laid down in the charges of the courts. Many jurors who evade an irksome service by affirming scruples against capital punishment are doubtless shamming. Yet the fact remains that a large proportion of the veniremen summoned in all recent trials for murder have testified under oath that they could not be trusted to investigate and determine issues of fact as sworn jurymen in a court of justice because their views as to punishment differed from those of the law. In one of these trials a venireman told the court that where an act resulting in a murder was directed against society generally, there should be capital punishment, but that where only the citizen killed was the object of attack, such punishment could not be justified; and this theory was gravely discussed by the press without suggestion that there was anything amiss in refusal of a citizen to do his legal duty in the public administration of justice because he had thought out a new theory of punishment which the state did not recognize. The appeals to the so-called unwritten law, of which we have heard so much of late, are appeals from the clear and settled law to the individual feelings of the citizen, and no one seems to be deterred from following his own inclinations in such cases by the thought that it is his duty to subordinate those feelings to the general sense as formulated in the law.[1] Much of this individual self-assertion against the law is due, no doubt, to the lack of a settled social standard of justice during

[1] "Lord Strathcona in his address referred to the increase of American immigration into Canada, declaring that many American farmers know that in the Canadian Northwest prospects are better, and that peace and order are more assured in Canada than in the United States." Nelson B. C. *Times*, July 2, 1907.

[1] Since the foregoing was written, we have been afforded a good example in the Labor Day address of Mr. Gompers, in which, if correctly reported, he said "he would obey no injunction that deprived him of his rights." Chicago *Inter-Ocean*, September 3, 1907.

Roscoe Pound, "The Need of a Sociological Jurisprudence," *The Green Bag* 19 (October 1907): 607–15.

a period of transition. But a large part must be attributed to a wide-spread disrespect for law, to a general sentiment that unless the individual does so assert himself, he or those in whom he feels an interest will not be dealt with as justice requires. "*Neminem opportet esse sapientiorem legibus,*" says Coke, "no one out of his own private judgment ought to be wiser than the law."[1] When everyone out of his private judgment is wiser than the law, there is a condition in which the law is of no effect. The fault, when such a condition exists, may rest with the people or with the law. For my part, I believe that current disrespect for law is not, in intention at least, disrespect for justice, and that the fault must be laid largely to the law and to the manner in which law is taught and expounded.

Political and juridical development were necessary before industrial and social development. Government and law created the environment of peace and order and stability in which alone the industrial and social organization of to-day could grow. Hence legal theory and doctrine reached a degree of fixity before the conditions with which law must deal to-day had come into existence. And at this point where legal principles were taking a final shape the growing point in human progress began to shift to the natural and physical sciences and their applications in engineering, in the arts, and in scientific cultivation of the soil and development of its resources. Titius and Seius, who in their day had driven philosophy from the schools, are not unlikely to be driven out in turn. The changed order of things has been felt in legal science. Research of almost every other sort has been endowed. Laboratories are set up to investigate every other human interest. A flood of bulletins goes forth annually to spread far and wide the latest results in the application of natural and physical science to health and wealth, in the application of economic theory to our material well-being, in the application of sociological principles to problems of state and municipal life. In all these things the public shows an enduring interest. It ought to be someone's duty to advise the people of the progress of juridical science and to make its results public property. It ought to be someone's duty to gather and preserve statistics of the administration of justice and to apply thereto or deduce therefrom the proper principles of judicial administration. Law teachers ought to be making clear to the public what law is and why law is and what law does and why it does so. But no one can obtain statistics at all complete nor at all authoritative upon the most everyday points in judicial administration. No one is studying seriously or scientifically how to make our huge output of legislation effective. There are no endowments for juridical research. There are no laboratories dedicated to legal science whose bulletins shall make it possible for the scholar to obtain authoritative data and for the lay public to reach sound conclusions. No one thinks of establishing them. In state universities where one may be trained gratuitously in the most specialized applications of science, where an engineer may obtain his technical training without expense, students of law are charged a heavy tuition. The obvious reason is that the people do not feel that jurisprudence is doing anything for them. Legal science must first exhibit some practical results. It must show that it has something to offer before it may hope for public recognition. But it should not be suffered to remain stricken with sterility in face of the fruitful tasks that await it in this era of transition.

Legal science seems to begin everywhere in the attempt to distinguish cases superficially analogous and to establish "differences" or "diversities."[1] From this comparison of rules within the legal system,

[1] Co. Lit. 97*b*.

[1] Ihering, Geist des Römischen Rechts, III, 1, 11. In the period just before Coke the reports

it is but a step to compare with the rules of other legal systems and to compare systems themselves. This was the theory of the *Ius Gentium*, and doubtless to some extent the practice. It is to be seen in our own law at least as far back as Fortescue, and, though scorned by Coke, was well marked in the seventeenth and eighteenth centuries in the development of equity[1] and the rise of the law merchant.[2] The comparative tendency is followed by a philosophical tendency. Law is felt to be reason. It is not enough that a rule exist in one system or that it has its analogues in others. The rule must conform to reason, and if it does not, must be reshaped until it does, or must have reasons made for it. This was the dominant idea of the *Ius Naturale*. It is seen in continental Europe in the period after Grotius and in the *usus modernus*. In our law it is seen in the eighteenth and nineteenth centuries in the giving of "reasons" in which Blackstone and the lecturers on law who followed him in America were so prolific. To this philosophical tendency an analytical tendency succeeds by way of revolt. The validity of the so-called reasons is examined. Being for the most part *ex post facto* and, though specious, neither historically sound nor critically adequate, they fall to the ground, and often carry the rules with them. Hence the analytical period usually coincides with a critical tendency and an era of reform through legislation. Such a tendency in Roman law culminated in the legislation of Justinian.[3] In Germany it has overthrown the long-dominant Romanism and brought forth a German code. In our common-law system it brought about the reform movement, inaugurated by Bentham, the force of which is not yet wholly spent. Along with this analytical tendency, sometimes beginning before it, sometimes after but as another phase of the revolt from the philosophical, there is an historical tendency. How far we see something of this in the classical Roman law I need not inquire. It preceded the analytical tendency in Germany, it has followed that tendency in France. In England, it seems to have followed. In either event, it completes the exposure of the specious explanations of the preceding period and insures the overthrow of pseudo-philosophy. With the rise and growth of political, economic, and sociological science, the time is now ripe for a new tendency, and that tendency, which I have ventured heretofore to style the sociological tendency, is already well-marked in Continental Europe.[1]

With us, the profession, at least, is still for the most part under the domination of the methods and phrases of the second tendency, long after that tendency has spent its force. The practitioner is little, if at all, beyond Blackstone and his nineteenth-century imitators. Even a respectable law-school advertises that it teaches "the law and the reasons." These "reasons" of the eighteenth-century type are still found in text books in common use, and the books which students read are too often full of them. They are to be found in judicial decisions also.[2] Distinctions of substantive law which have their origin in forgotten niceties of practice are

were full of "putting differences" and "noting diversities." e. g. Keilwey, 50, 53, 57, Dyer, 111 *b*.

[1] Spence, Equitable Jurisdiction of the Court of Chancery, I, 413.

[2] Wooddesson, Elements of Jurisprudence, lxxix, in 1792 treats the law merchant as part of the law of nations.

[3] See, for instance, Code VII, 25, in which Justinian says of a classical distinction that it is "a mere puzzle" and "a vain and superfluous phrase."

[1] See Stammler, Wirthschaft und Recht (1906), Ehrlich, Soziologie und Jurisprudenz (1906), Gumplowicz, Allgemeines Staatsrecht (1907), Vaccaro, Les Bases Sociologiques du Droit et de l'État (1898), Grasserie, Les Principes Sociologiques du Droit Civil (1906).

[2] To take a striking example, if an old one, a court of high authority in explaining the rule

still solemnly explained by "reasons" that neither conform to historical fact nor satisfy any real sense of justice. Undoubtedly we have made some progress. The teachings of historical and analytical jurists are percolating through the schools into the profession. The type of "reason" that sets forth how this or that was "presumed" or was "implied" or was "constructive," which had been used to explain gradual changes in the law by covering them up with fiction, or to reconcile existing doctrines with *ex post facto* generalizations, is falling out of use. First teachers and then a few text writers began to insist upon more scientific treatment. To-day even an occasional court makes bold to speak of quasi-contract. But the books are still full of the old method, even in those matters in which progress is making. To take but one example. In a book widely cited, used during the past year in at least ten law schools, and read by the majority of those who prepare for the Bar in the offices of practitioners, we are told of a presumption of damage in trespass to lands, in the attempt to make our common law of trespass fit into a Romanized mold of *damnum* and *iniuria*[1] and we are advised that there is no quasi-contractual liability (as we should put it now) in the case of a certain act, because "we cannot suppose it would take place except as a wrongful act."[2] So long as students are set to read these "reasons" and are taught that this or that is "implied" or "presumed" contrary to common sense, or is "constructively" something other than what it obviously is, and so long as laymen listen to these explanations from the bench when they sit upon juries, or from counsel whom they consult as clients, or from the published opinions of the courts, the people are certain to be confirmed in the belief, popular in all circumstances, that law is an arbitrary mass of technicalities having no relation to reason or justice. To-day the reasons behind the law must be such as appeal to an intelligent and educated public. There must be reasons behind it, as there must be behind everything that is imposed upon the people of the present. And, if I may adapt a common-law terminology, they must be reasons in deed rather than in law.

Law is no longer anything sacred or mysterious. Judicial decisions are investigated and discussed freely by historians, economists, and sociologists. The doctrines announced by the courts are debated by the press, and have even been dealt with in political platforms. Laymen know full well that they may make laws, and that knowledge of the law is no necessary prerequisite of far-reaching legislation. The legislative steam roller levels the just rule with the unjust in the public anxiety to lay out a new road. The introduction of the doctrine of comparative negligence in employer's liability statutes and recent statutes leaving questions of negligence wholly to juries or, in other words, cutting off all assurance that like cases involving negligence will receive a like decision, afford interesting examples. The common-law doctrines, at least as explained to the people, did not commend themselves to the public intelligence. In such cases, something is to be done; and it is done too often with but little understanding of old law, mischief, or remedy. But we have no right to rail at such miscarriages. The public must move in such legal light as the luminaries of the law afford. Those who practice and those who teach the law should be in a position to command the popular ear. We must reinvestigate the theories of justice, of law, and of rights. We must seek

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altered by Lord Campbell's Act tells us, following Grotius, that "the life of a freeman cannot be appraised, but that of a slave who might have been sold, may." Hyatt *v.* Davis, 16 Mich. 180, 191.

[1] Cooley, Torts, 63, 69.

[2] Cooley, Torts, 95.

the basis of doctrines, not in Blackstone's wisdom of our ancestors, not in the apocryphal reasons of the beginnings of legal science, not in their history, useful as that is in enabling us to appraise doctrines at their true value, but in a scientific apprehension of the relations of law to society and of the needs and interests and opinions of society of to-day.

Ample reason for the present condition of jurisprudence in America is to be found in the dominance of practitioners and of the ideas and ideals of practitioners in legal education. So long as the one object is to train practitioners who can make money at the Bar, and so long as schools are judged chiefly by their success in affording such training, we may expect nothing better. Yet this is an explanation rather than an excuse. The schools must teach the rules by which the courts decide cases. They cannot teach a different law from that which is recognized and enforced by the courts. But they are not bound to teach traditional legal pseudo-science. They are not bound to teach the practitioner's philosophy of law, however much he may think it involved in the very idea of a legal system. It is not long ago that a fictitious legal history was equally orthodox. Freeman tells us of a law-teacher who "required the candidates for degrees to say that William the Conqueror introduced the feudal system at the great Gemot of Salisbury in 1086,"[1] and when remonstrance was made by the historian, replied that he was examiner in law; that "facts might be found in chronicles, but law was to be found in Blackstone; it was to be found in Blackstone as an infallible source; what Blackstone said, he, as a law-examiner, could not dispute."[2] But courts and law books can no more make authoritative philosophy than they can make authoritative history.

I do not advocate the adding of any new course or new courses to our curricula. Doubtless the schools are offering now all the courses that students may take with profit. But law schools not only make tough law,[1] they make tough legal science, as the long postponement of the German code through dominance of the historical school, the persistence of eighteenth-century theories in American legal thought, long after they had been abandoned in all other fields, and the sturdy resistance of common-law individualism to the collectivist tendencies of modern thought abundantly witness. We must not make the mistake in American legal education of creating a permanent gulf between legal thought and popular thought. But we may commit this mistake not merely by teaching legal pseudo-science and obsolete philosophy but quite as much by the more prevalent method of saying nothing about these matters at all, leaving the student to pick up what he may here and there in the cases and texts, with no hint that there are other conceptions and other theories entertained by scholars of no small authority, and to go forth in the belief that he is completely trained.[2] I have little faith in abstract courses, even if our schools had room for any new courses. Instruction of the sort required must be concrete. It must lie in the point of view from which concrete legal problems are discussed, concrete doctrines are expounded, and actual decisions are investigated and criticized. The modern teacher of law should be a student of sociology, economics, and politics as well. He should know not only what the courts decide and the principles by which they decide, but quite

[1] It is interesting to note that this statement is still with us in law-teaching. Mordecai, Law Lectures, 24 (1907).

[2] Freeman, Methods of Historical Study, 73–74.

[1] Maitland, English Law and the Renaissance, 25.

[2] Complaint has been made in France to the same effect. Vareilles-Sommières, Principes Fondamentaux du Droit, preface.

as much the circumstances and conditions, social and economic, to which these principles are to be applied; he should know the state of popular thought and feeling which makes the environment in which the principles must operate in practice. Legal monks who pass their lives in an atmosphere of pure law, from which every worldly and human element is excluded, cannot shape practical principles to be applied to a restless world of flesh and blood. The most logical and skillfully reasoned rules may defeat the end of law in their practical administration because not adapted to the environment in which they are to be enforced.[1] It is, therefore, the duty of American teachers of law to investigate the sociological foundations, not of law alone, but of the common law and of the special topics in which they give instruction, and, while teaching the actual law by which courts decide, to give to their teaching the color which will fit new generations of lawyers to lead the people as they should, instead of giving up their legitimate hegemony in legislation and politics to engineers and naturalists and economists.

Without trenching upon points of controversy, it may be assumed that the practical end of the administration of justice according to law, is such adjustment of the relations of men to each other and to society as conforms to the moral sense of the community. In the past this adjustment has conformed to the general moral sense by proceeding along lines of strict individualism. The idea has been, so far as possible, to allow everyone to do and to acquire all that he can. The individualist conception of justice as the liberty of each limited only by the like liberties of all has been the legal conception. So completely has this been true that sociologists speak of this conception as "legal justice," and it is sometimes assumed that law must needs aim at a different kind of justice from what is commonly understood and regarded by the community. But this cannot be. Law is a means, not an end. Such a divergence cannot endure unless the law is in the hands of a progressive and enlightened caste whose conceptions are in advance of the public and whose leadership is bringing popular thought to a higher level.[1] When, instead, law is in the hands of a highly cautious and conservative profession, whose thought on such matters lags behind, the divergence provokes irritation at law and disregard of its mandates. To-day, while jurists in America are repeating individualist formulas of justice, sociologists are speaking rather of "the enforcement by society of an artificial equality in social conditions which are naturally unequal."[2] They are defining justice as the satisfaction of everyone's wants so far as they are not outweighed by others' wants.[3] That this is the direction of popular thought is shown by the unconscious drift of the law in the same direction. It is true we still harp upon the sacredness of property before the law. The leader of our profession tells us that a fundamental object is, "preservation of the rights of private property."[4] A text book used in more than one law school advises us that "the right of property is of divine origin

[1] See Brunner's comment upon the effect of the reception of Roman law in Germany on peasant possessions. Grundzuge der Deutschen Rechtsgeschichte, 216.

[1] An excellent example may be seen in the history of equity in England. Equity was unpopular, but it was in the right line of progress. The chancellors, however, developed doctrines of an ultra-ethical character which went beyond the requirements of common sense, and these refinements of equity have been largely swept away. For instances of this, the doctrine as to compensation of trustees, precatory trusts, and the rules as to clogging the equity of redemption may suffice.

[2] Ward, Applied Sociology, 23.

[3] Ward, Applied Sociology, 22–24, Willoughby, Social Justice, 20-25.

[4] Argument of Mr. Choate in the Income Tax Cases, 157 U. S. 429, 534.

derived by title-deed from the universal creator of all things and attested by universal intuition."[1] The highest court of one of the states tells us in eloquent words that the right to take property by will is an absolute and inherent right, not depending upon legislation.[2] But the steady progress of the law is in another direction. Ihering lays down this as the difference between the new and the old: "Formerly high valuing of property, lower valuing of the person; now, lower valuing of property, higher valuing of the person."[3] He says the line of legal growth of the future is "weakening of the sense of property, strengthening of the feeling of honor."[4] And that this is true for our law in America, the continual complaints that modern legislation deprives men of the power to regulate their own affairs and to manage their own property bear abundant witness.

The progress of law away from the older individualism is not confined to property rights. A passing of ultra-individualist phases of common-law doctrines on every hand, both through legislation and through judicial decision, is sufficiently obvious. Let us note a few cases. One of the so-called natural rights, which is still insisted upon, is freedom of contract, the right of each man to say for himself what engagements he will undertake and to settle the details thereof for himself. But modern legislation is constantly abridging this right by creating classes of persons and classes of subjects, with respect to which rights and obligations are defined by law "and made conclusive upon the parties, irrespective of stipulations attempting to set them aside;"[5] and such statutes are now held constitutional within wide limits. Nor is this tendency confined to legislation. The contract of insurance has been so dealt with by the courts that it is no longer an ordinary contract, to be judged as such, but the law of insurance has become a specialized body of doctrine.[1] The older decisions were extremely strict in insisting upon the right of a surety to make his own contract in every respect. The slightest deviations, which had the effect of varying in some degree the obligation for which he engaged to become answerable, sufficed to relieve him. He and he alone could determine for what he would bind himself, and he could do so as arbitrarily as he chose, for it was his affair.[2] But the advent of the surety company has already produced a change. It was felt that the right of every person to make his own contracts for himself must give way to a public demand for enforcement of contracts of insurance unless some substantial injury to the insurer appeared, and this feeling has led to a line of judicial decisions with respect to contracts of surety companies that cannot well be reconciled with the settled course of adjudication as to natural persons.[3] Professor Gray has noted a similar phenomenon in the matter of spendthrift trusts.[4] The common law insisted rigorously on individual responsibility. It was not possible for a debtor through any device to enjoy the whole substantial benefit of property free from claims of his creditors. The American decisions which permit such trusts are, as he points out, at clear variance with the spirit of the common law. They are another sign of the drift toward equality in the satisfac-

[1] Smith, Personal Property, Sec. 33.

[2] Nunnemacher *v.* State, 108 N. W. 627.

[3] Ihering, Scherz und Ernst in der Jurisprudenz (9 ed.) 418.

[4] Ihering, Scherz und Ernst in der Jurisprudenz (9 ed.) 429.

[5] Freund, Police Power, Sec. 503.

[1] Wambaugh, Cases on Insurance, preface.

[2] Hence if the king died, surety for the peace was released "for 'tis to observe his peace, and when he is dead, 'tis not his peace." Anonymous. Brook's New Cas. 172. A typical modern case is U. S. *v.* Boecker, 21 Wall. 652.

[3] See for instance, American Bonding Co. *v.* City of Ottumwa, 137 Fed. 572, Segari *v.* Mazzei (La.) 41 So. 245.

[4] Gray, Restraints on the Alienation of Property (2 ed.) viii–x.

tion of wants rather than equality in freedom of action as the standard of justice; and the decisions which Professor Gray justly stigmatizes as "snobbish"[1] are but crude attempts to apply this standard before it has been recognized clearly or has taken definite shape. Probably nowhere is the individualism of the common law expressed more characteristically than in the doctrines as to contributory negligence. Recent legislation with respect to employer's liability is almost wiping out those doctrines. It seems to be felt that nothing short of fraud, or disregard of life or limb so gross as to amount to fraud, should preclude recovery. No less characteristic is the view which the common law takes of industrial accidents. It insists that such accidents must be due either to wholly unpreventible conditions or to the negligence of some person. Either the employer, it holds, was negligent or the employee. That the business itself, and not the negligence of some person operating therein, may be responsible for the accident, is a situation which it cannot conceive of and for which it makes no provision beyond laying down that the employee assumes the incidental risks. But it is coming to be well understood by all who have studied the circumstances of modern industrial employment that the supposed contributory negligence of employees is in effect a result of the mechanical conditions imposed on them by the nature of their employment, and that by reason of these conditions the individual vigilance and responsibility contemplated by the common law are impossible in practice. Hence, while the common law insists upon the workman taking the ordinary risks of his occupation, requires him to show negligence on the part of his employer as a prerequisite of recovery, and holds him to account rigidly for negligence of his own contributing to the accident, the public has been coming more and more to think that the employer should take the risk of accidents to his men, as of accidents to his plant and machinery, and that contributory negligence — where there is no willful self-injury and no fraud — is one of these ordinary risks. As the President put it recently in his address at the Georgia Day celebration at the Jamestown Exposition: "It is neither just, expedient, nor humane; it is revolting to judgment and sentiment alike that the financial burden of accidents occurring because of the necessary exigencies of their daily occupation should be thrust upon those sufferers who are least able to bear it. . . . When the employer . . . starts in motion agencies which create risks for others, he should take all the ordinary and extraordinary risks involved." Juries have perceived this dimly for years and have rendered verdicts accordingly. Legislation is now fast introducing rules founded avowedly upon this theory. If this legislation is constructed and applied by men thoroughly imbued with the common-law doctrine and with common-law prejudices, the divergence between legal rules and popular thought, if it does not produce legislation still more radical, will add to existing disrespect for the law. But we must note here once more that higher regard for the person and regard for equality in the satisfaction of wants are the controlling elements in the newer doctrine.

Another noteworthy sign of the shifting from the standard of so-called legal justice to that of social justice is to be seen in the tendency of modern legislation to reintroduce *status* or something very like it. The conception that rights should belong or duties attach to a person of full age and natural capacity because of the position he occupies in society or of the occupation in which he is engaged, is repugnant to the spirit of the common law. Hence courts, imbued strongly with common-law notions of this matter, have tended to hold statutes which carry out this idea unconstitutional whenever possible. But the conception is perfectly reconcilable with, and indeed is

[1] Restraints on the Alienation of Property, xi.

demanded by the idea of social justice. When the standard is equality of freedom of action, all classes other than those few and simple ones, based on so-called natural incapacities, such as infancy and lunacy, are repugnant to the idea of justice. When the standard is equality in the satisfaction of wants, such classification and such return in part to the idea of *status* are inevitable.

Even more marked and of longer standing is the weakening of extreme doctrines of *fides est servanda* through the shifting to the idea of social justice. Here again the point of view of the common law was extremely individualist. It left the individual free to assume whatever obligation he chose and to determine its details for himself. But here, as elsewhere, it imposed a responsibility corresponding to this freedom. If he chose to assume an obligation, the common law held him to it jealously. He had weighed the risk and had taken it. As he was allowed to incur it like a man, he must bear its consequences like a man. Hence common-law judges were extremely reluctant to permit contract debtors to escape by availing themselves of the statute of limitations, and for a time very nearly nullified that statute so far as it applied to debts.[1] But to-day exemption, homestead, and appraisement statutes, not to speak of bankruptcy and insolvency laws, greatly restrict the power of the creditor to enforce the liability assumed.[2] There is a growing sentiment that the creditor who extends credit should assume a risk. The principle that promises must be kept yields to the demand that satisfaction of the reasonable wants of the debtor be first reasonably provided for.

In all cases of divergence between the standard of the common law and the standard of the public, it goes without saying that the latter will prevail in the end. Sooner or later what public opinion demands will be recognized and enforced by the courts. A Bench and Bar trained in individualist theories and firm in the persuasion that the so-called legal justice is an absolute and a necessary standard, from which there may be no departure without the destruction of the legal order, may retard but cannot prevent progress to the newer standard recognized by the sociologist. In this progress lawyers should be conscious factors, not unconscious followers of popular thought, not conscious obstructors of the course of legal development. To this end it is the duty of teachers of law, while they teach scrupulously the law that the courts administer, to teach it in the spirit and from the standpoint of the political, economic, and sociological learning of to-day. It is their task to create in this country a true sociological jurisprudence, to develop a thorough understanding between the people and the law, to insure that the common law remain, what its exponents have always insisted it is — the custom of the people, the expression of their habits of thought and action as to the relations of men with each other. And if in so doing they must often take issue with courts and practitioners and books of authority as to the nature of justice and of rights and the basis of current legal conceptions and of received principles, they may say as the naturalist to his more conservative colleagues: "*raisonniert so viel ihr wollt, aber fügt Euch in das wissen schaftlich unvermeidliche.*"[1]

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[1] See an interesting discussion of this in Pritchard *v.* Howell, 1 Wis. 131.

[2] See also the recent attempt of the federal circuit court to force a scheme of reorganization upon reluctant creditors of a public service company in the Chicago Traction Cases. Whatever view may be taken of this decree, it is a sign of the times.

[1] Otto Kuntze, Revisio Generum Plantarum, III, fin.